IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5504 of 2007()

CRIME NO.140/2005 OF MUNAMPAM POLICE STATION

: APPLICANTS/ACCUSED

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1. SHAFEEQ.P.S.,S/O. SALAM,
PLAPARAMBIL HOUSE,EDAVANAKADU NORTH END
(MAYA BAZAR) ERNAKULAM.

2. UNNIKRIISHNAN.N.K.,S/O. KUMARAN,
NIKATHUTHARA HOUSE,EDAVANAKADU NORTH END
(MAYA BAZAR) ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM, REPRESENTING THE SI OF POLICE,
MUNAMPAM POLICE STATION.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5504 of 2007

Dated this the 17th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2 in a crime registered, inter alia, under Sections 452, 307 and 324 r/w 149 I.P.C. The son of the injured is the defacto complainant. On account of some prior animosity, the defacto complainant's father was allegedly attacked by a group of persons including the petitioners herein. Altogether there 12 accused persons. The alleged incident took place on 19.05.05. In the F.I statement lodged by the defacto complainant, he had not named anyone of the accused. The complicity of the petitioners was allegedly ascertained when the injured, who was in the I.C.U for sometime, was questioned and his statement was recorded later by the Investigating Officer. The petitioners have been brought on the array of accused within days of the incident. The petitioners have not been arrested yet. Investigation is in progress. They apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false. The petitioners are not named in the F.I.R. The petitioners have no criminal antecedents. In these circumstances, the petitioners may be granted anticipatory bail, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is true that the defacto complainant was not able to name the petitioners correctly. He was not able to name anyone of the accused. In the course of investigation, the names of the accused persons were ascertained from the injured. The injured knew the petitioners earlier. The learned Public Prosecutor submits that there are no reasons whatsoever to doubt or suspect the version of the victim who had given the names of the petitioners. The injuries suffered are serious. A fracture of the skull born has been suffered. Dangerous weapons have been used. At any rate, this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can be invoked in favour of the petitioners. The petitioners may be directed to follow the normal and ordinary course of appearing before the Investigating Officer or the learned Magistrate. They may be directed then to seek regular bail in the ordinary course, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. Having considered all the relevant circumstances anxiously, I find no features in this case which justify or warrant the invocation of the extraordinary equitable under Section 438 Cr.P.C. The learned Public Prosecutor has brought to my notice the nature of the injuries suffered and the

weapons used for the commission of the offence. The learned Public Prosecutor further points out that the petitioners have been brought on the array of accused within days of occurrence. No one has a case that the police have any animosity against the petitioners to falsely implicate them. It cannot be lost sight of that though the petitioners have been arrayed as accused long time back, the petitioners have not been arrested by the police so far. I find merit in the submission by the learned Public Prosecutor that the petitioners may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-